

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 23rd Floor
San Francisco, California 94105**

TEXT OF PROPOSED REGULATIONS

**INVESTMENT CONSULTANTS PERFORMING REVIEW OF DERIVATIVE
TRANSACTIONS AND RELATED REVIEWS**

RH05047172

May 19, 2006

Title 10, Chapter 5, Subchapter 6.5, Article 1, Sections 2690.90 – 2690.94

Investment Consultants Performing Review of Derivative Transactions and Related Reviews

Section 2690.90. PURPOSE: Insurance Code section 1211 authorizes a domestic incorporated insurer to engage in derivative transactions, as defined, subject to specified conditions.

Subsection (l) of section 1211 provides that the Commissioner may adopt rules and issue guidelines establishing standards and requirements relative to practices authorized by section 1211. In connection with any of the actions contemplated by section 1211 to be taken by the Commissioner, including review of an insurer's written guidelines with respect to derivative transactions and review of the documentation maintained by an insurer with respect to derivative transactions, the Commissioner may deem the actions to be an examination of an insurer subject to the provisions of sections 730 to 738, inclusive.

Further, subsection (l) requires the Commissioner to issue regulations establishing requirements regarding the disclosure of affiliations and conflicts of interest between an insurer and the person(s) assigned to perform such examinations.

AUTHORITY: Insurance Code section 1211(l); REFERENCE: Insurance Code sections 1211, 730 - 738

Section 2690.91. DEFINITIONS: For purposes of section 2690.94, the following terms shall have the respective meanings hereinafter set forth:

- (a) "Investment Consultant" shall refer, as appropriate, to either a natural person or a company engaged in the evaluation and assessment of derivative transactions, assigned by the Commissioner to perform the work authorized under section 1211.

(b) “Affiliate” or “affiliation” is defined as follows:

(1) Parent subsidiary. A parent subsidiary relationship exists when one corporation directly or indirectly owns shares possessing more than 10 percent of the voting power of another corporation.

(2) Otherwise related business entity. Business entities, including corporations, partnerships, joint ventures and any other organizations and enterprises operated for profit, which do not have a parent subsidiary relationship are otherwise related if any one of the following three tests is met:

(A) One business entity has a controlling ownership interest in the other business entity.

(B) There is shared management and control between the entities. In determining whether there is shared management and control, consideration shall be given to the following factors:

(i) The same person or substantially the same person owns and manages the two entities;

(ii) There are common or commingled funds or assets;

(iii) The business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis;

(iv) There is otherwise a regular and close working relationship between the entities;

(C) A controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

(c) “Conflict of interest” – an Investment Consultant has reportable conflicts of interest with regard to a particular company if the Investment Consultant has one or more economic interests in that company.

(1) “Economic interests” – there are three types of economic interests.

(A) Investment in the Company – The Investment Consultant has a direct or indirect investment worth two thousand dollars (\$2,000) or more in the Company.

(B) Sources of Income –

(i) The Investment Consultant has received income from the Company, or affiliated company, within the last 12 months or during the period of time for which the examination will apply.

(ii) The Investment Consultant holds or held a position in the Company, or affiliated company, within the last 12 months or during the period of time for which the examination will apply. Such position includes, but is not limited to, director, officer, partner, trustee, employee, or any position of management.

(C) Sources of Gifts - The Investment Consultant has received from the Company, or affiliated company, gifts with a fair market value of three hundred sixty dollars (\$360)¹ or more within the last 12 months or during the period of time for which the examination will apply.

(d) “Company” is a domestic insurance company, or a group of insurance companies that includes a domestic insurance company, being examined and also includes those entities contracted by insurance company (ies) to perform investment management, provide investment advice, and any other related investment services.

AUTHORITY: Insurance Code section 1211(l); REFERENCE: Insurance Code section 1211; California Code of Regulations, Title 2, Chapter 7, sections 18703.1, 18703.4

Section 2690.92. DISCLOSURE: Prior to assigning an Investment Consultant to conduct examinations of matters authorized by section 1211, the Department of Insurance shall require the Investment Consultant to complete the Conflict of Interest and Disclosure of Affiliation Form.

AUTHORITY: Insurance Code section 1211(l); REFERENCE: Insurance Code section 1211

Section 2690.93. CONFIDENTIALITY: The Conflict of Interest and Disclosure of Affiliation Form shall be confidential in accordance with Insurance Code section 735.5(c).

AUTHORITY: Insurance Code section 1211(l), 735.5(c); REFERENCE: Insurance Code section 1211,

Section 2690.94.

CONFLICT OF INTEREST AND DISCLOSURE OF AFFILIATION FORM

¹ This threshold amount is linked to the threshold established by the Fair Political Practices Commission in California Code of Regulations, Title 2, Division 6, Section 18703.4. The terms of section 18703.4 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference.

COMPANY (COMPANIES) _____

Examination Period _____

Investment Consultant: _____

1. Does the Investment Consultant have a written policy to define conflicts of interest and a process in place to check for and detect actual or potential conflicts of interest?

If yes, please describe the process in detail:

2. Does the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, have a direct or indirect investment in the COMPANY, or did the Investment Consultant or any employee of Investment Consultant assigned to the examination of the COMPANY have a direct or indirect investment in the COMPANY within the last 12 months or during the period of time for which the examination will apply?

If yes, please explain:

3. Does the Investment Consultant have a direct or indirect affiliation with the COMPANY, or did the Investment Consultant have a direct or indirect affiliation with the COMPANY within the last 12 months or during the period of time for which the examination will apply?

If yes, please explain:

4. Has the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, performed any services and/or received any income from the COMPANY within the last 12 months or during the period of time for which the examination will apply?

If yes, please explain:

5. Does the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, hold any current position with the COMPANY, or has the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, held any position with the COMPANY within the last 12 months or during the period of time for which the examination will apply?

If yes, please explain:

6. Does the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, have any financial relationship with the COMPANY, or did the Investment Consultant, or any employee of the Investment Consultant assigned to the examination of the COMPANY, have any financial relationship with the Company within the last 12 months or during the period of time for which the examination will apply?

If yes, please explain:

7. Has the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, received any gifts, compensation, services, or any other thing of monetary value from the COMPANY within the last 12 months or during the period of time for which the examination will apply?

If yes, please list the items and explain:

8. Was the Investment Consultant, or any employee of the Investment Consultant who is assigned to the examination of the COMPANY, involved in any way with the investments that are the subject of this examination?

If yes, please explain:

9. Does the Investment Consultant have any potential engagements or contracts that are currently being considered which would result in an affirmative response to any of the questions above?

If yes, please explain.

Circle one attestation clause as appropriate:

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein is true and complete.

OR

I _____ (name of Officer), hereby represent and warrant that I am authorized to complete this Conflict of Interest and Disclosure of Affiliation Form on behalf of _____ (name of company). I do so in my capacity as _____ (title of Officer).

Investment Consultant

Date

Reviewed by:

Department of Insurance

Date

AUTHORITY: Insurance Code section 1211(l); REFERENCE: Insurance Code section 1211, California Code of Regulations, Title 2, Chapter 7, sections 18703.1, 18703.4